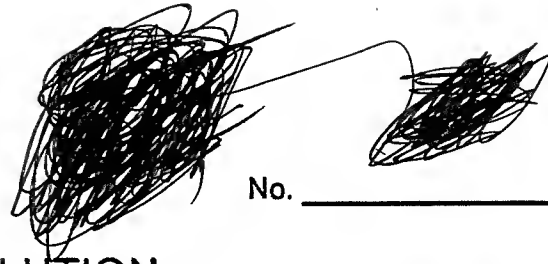




CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

 No. _____

RESOLUTION

INITIATING AMENDMENTS TO THE REVISED CHARTER OF THE CITY AND COUNTY OF HONOLULU 1973 (2017 EDITION) DISSOLVING THE HONOLULU AUTHORITY FOR RAPID TRANSPORTATION; TRANSFERRING ITS POWERS, DUTIES, AND FUNCTIONS TO THE DEPARTMENT OF TRANSPORTATION SERVICES AND OTHER APPROPRIATE DEPARTMENTS; AND MAKING CONFORMING AMENDMENTS.

WHEREAS, the voters of the City and County of Honolulu ("City") approved a proposed Charter amendment at the 2010 general election to establish a public transit authority known as the "Honolulu Authority for Rapid Transportation" ("HART"); and

WHEREAS, pursuant to Section 17-103 of the Revised Charter of the City and County of Honolulu (2017 Edition) ("Charter"), HART is charged with the development of the City's planned fixed guideway transit system, known as the "Honolulu High-Capacity Transit Corridor Project" ("Rail Project" or "project"); and

WHEREAS, the Rail Project is a planned 20.1-mile fixed-guideway rail transit system extending from East Kapolei to the Ala Moana Shopping Center on the island of Oahu, intended to mitigate Oahu's east-west traffic corridor congestion; and

WHEREAS, HART began operations on July 1, 2011, and the Rail Project began construction on April 20, 2012, but during the subsequent seven years the Rail Project has suffered from numerous set-backs, significant delays, legal actions, leadership changes, and, most significantly, an increase in the estimated project costs from \$5.16 billion in 2012 to \$9.18 billion in 2018, as well as a delay in the anticipated date of completion to full service operation from 2020 to 2026; and

WHEREAS, on December 19, 2012, the City and the Federal Transit Administration ("FTA") entered into a Full Funding Grant Agreement ("FFGA") for the Rail Project providing federal grant funding to the City in the amount of \$1.55 billion; and

WHEREAS, following escalating costs, project delays, and HART's disclosure to the FTA in December 2016 that the estimated Rail Project cost would result in a financing shortfall of approximately \$2.847 billion, the FTA advised HART that it was withholding about \$744 million of the grant funds pending receipt of an acceptable project recovery plan demonstrating how the City and HART intend to address the project's runaway costs and implementation delays; and

WHEREAS, despite HART's submission to the FTA of a Recovery Plan on April 28, 2017 (including a revised financial plan) on September 15, 2017 (approved by



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the City Council ("Council") through Resolution 17-266), and an October 24, 2018 Revised Recovery Plan on November 19, 2018 (approved by the Council through Resolution 18-239), the FTA has yet to accept a revised project recovery plan from HART deemed to adequately address the FTA's concerns; and

WHEREAS, on September 5, 2017, the Governor signed Act 001, Special Session of 2017 ("Act 1"), to approve an estimated \$2.4 billion in additional funds for the Rail Project through an extension of the City's general excise and use tax surcharge, an increase in the State's transient accommodations tax, and a reduction in the percentage of the general excise and use tax surcharge to be retained by the State of Hawaii before transmittal to the City; and

WHEREAS, the October 24, 2018 HART Recovery Plan estimated that, even with additional funding from the State under Act 1, an additional \$214 million in City funding will be needed for completion of the construction of the Rail Project; and

WHEREAS, Act 1 also required the Hawaii State Auditor ("State Auditor") to: (1) conduct an audit of HART records, including an examination of HART's financial records and an analysis of HART's financial management "to determine whether funds received by the Honolulu authority for rapid transportation from the county surcharge on state tax are being managed and used in a reasonable manner," and (2) obtain from HART "a detailed financial plan that describes the predicted means by which the Honolulu authority for rapid transportation and the City will finance the ongoing costs of maintaining and operating the Honolulu rail transit project without the use of state moneys or other state-provided financial supports," among other things; and

WHEREAS, in January 2019, the State Auditor issued the first two (Report Nos. 19-03 and 19-04) ("State Audit") of four reports comprising its audit of HART pursuant to Part IV of Act 1, which, based on a review focused primarily on fiscal years 2014-2016, describe questionable management decisions for the Rail Project and find, among other things, that:

1. Rail project costs increased from \$5.122 billion in 2012 to \$9.188 billion in 2018;
2. HART prematurely entered into contracts under an artificial timeline and a fragile financial plan, increasing Rail Project costs by more than \$354 million;



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3. HART reported one set of rail cost and schedule estimates to the HART Board of Directors ("HART Board"), political leaders, and the public, and different cost and schedule estimates to the FTA;
4. HART's inaccurate reporting of project costs and completion schedule undermined HART Board oversight and eroded public confidence;
5. HART's updates, featuring unrealistic opening dates and inadequate contingency funds, obscured a rising cost at completion;
6. HART's contingency data may have been tainted, and HART's misreporting of project contingency levels may have distorted the Rail Project's financial picture and delayed the triggering of a recovery plan;
7. HART's and the HART Board's policies delineating decision-making responsibilities were still in flux;
8. HART was relying on third-party consultants to oversee and manage other third party consultants, paying an average of \$500,000 a year in salaries, benefits and overhead to each of the 18 consultants, many of whom held the authority's top management positions but did not report directly to HART; and
9. Some delay claims and change orders remained unresolved, which may increase rail costs even further; and

WHEREAS, the State Auditor also reported many difficulties his office encountered in accessing information from HART for the audit, as well as the failure of HART's former executive director, Daniel Grabauskas, to provide timely notice of rising costs and schedule delays to the HART Board, the Legislature, and the public; and

WHEREAS, pursuant to Resolution 15-90 (approved by the Council on May 6, 2015), the City Auditor conducted a performance audit of HART and issued, on April 15, 2016, its "Audit of the Honolulu Authority for Rapid Transportation" ("City Audit"), which made specific findings and recommendations concerning HART's failure to construct the Rail Project economically and effectively; and

WHEREAS, because concerns were raised subsequently regarding HART's implementation of the City Audit recommendations, on September 6, 2017, the City Council approved Resolution 17-199, CD1, requesting the City Auditor to conduct a follow-up audit of HART to determine and report to the Council: (1) whether HART's



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contractors fulfilled their obligations in an economical, effective, and efficient manner;
(2) whether expenditures charged to HART by its contractors were valid and accurate;
(3) whether HART has implemented the project management and contract administration controls over the contractors needed to prevent cost overruns for the Rail Project; and (4) whether HART had addressed the concerns raised and followed the recommendations made in its 2016 audit; and

WHEREAS, on January 18, 2019, the City Auditor issued the "Follow-Up Audit of the Honolulu Authority for Rapid Transportation, Resolution 17-199, CD1" ("Follow-Up Audit") covering the period from the inception of the Rail Project through 2015, which concludes, among other things, that during this period:

1. HART lacked internal controls to minimize costs and prevent schedule delays, which resulted from inexperienced HART managers and contractors who initiated and approved change orders and amendments that increased project costs and contributed to schedule delays without sufficient justification or documentation;
2. HART ignored, or only partially addressed, repeated warnings from the FTA-appointed Project Management Oversight Contractor about internal controls and schedule impacts;
3. HART's staff and succession planning remain incomplete and do not adequately prepare HART for the Rail Project's future; and
4. HART's policies and practices are inadequate to prevent cost overruns and schedule delays from recurring; and

WHEREAS, on May 3, 2019, the State Auditor released the fourth mandated report: "Contract and Vendor Compliance Review Report," prepared by contractor Baker Tilly Virchow Krause, LLP, to review HART's contractor invoice review and payment process for compliance with documented policies and procedures and HART's enforcement of its contracts' billing terms and conditions; and

WHEREAS, the fourth State Auditor's report found deficiencies in HART's contract administration, including, among other things, billing errors that led HART to overpay project contractors in several cases, including one of the agency's main consultants helping to manage construction, and that HART doesn't always require the necessary documentation to justify rail costs when its contractors submit their invoices; and



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WHEREAS, HART has received three federal grand jury subpoenas (dated, February 3, 8, and 15, 2019), issued by the United States Department of Justice in a federal criminal investigation of the agency, demanding that HART provide tens of thousands of documents related to construction and oversight of the Rail Project, including information involving its construction contracts, relocation funds, and payments, and minutes of its board meetings and executive sessions; and

WHEREAS, in 2019, HART has revealed a number of defects in Rail Project construction and equipment requiring remedial measures, including: (1) the March, 2019 disclosure that samples of passenger rail car floor and roofing materials failed to pass a fire-resistance test, requiring that all of the cars be retrofitted with a stainless steel layer on the roof and floors by the manufacturer, Hitachi-owned Ansaldo Honolulu, JV; and (2) the June 2019 disclosures of water leaking from cracks of the deck along about 1,400 feet of rail line in the Waipahu area and defects found in the lower segments of five steel "canopy arms," the platform frames holding up the fabric roof canopies at some of the project's rail stations; and

WHEREAS, on March 3, 2019, the Council, concerned that the inadequacy of HART's internal controls to prevent cost overruns and scheduling may have allowed HART employees, consultants, or contractors to misappropriate public assets or commit other illegal actions, passed Resolution 19-29, FD2, supporting the City Auditor's independent forensic audit of HART, distinct from City's Auditor's prior financial audits, to investigate potential fraud or malfeasance; and

WHEREAS, on June 5, 2019, the Council adopted Resolution 19-115, CD1, approving HART's updated Revised Recovery Plan of 2018 which incorporated a revised financial plan which was amended, as required by the FTA in a letter dated March 29, 2019, to include amended payout schedules for the \$214 million City Subsidy and for the \$744 million in remaining federal funding; and

WHEREAS, despite HART's June 7, 2019 hand-delivery to the FTA of the updated Recovery Plan, the FTA has not released any of the remaining balance of federal funds previously committed to the project; and

WHEREAS, at the 2016 General Election, City voters approved an amendment to Article 17 of the Charter transferring from HART to the Department of Transportation Services ("DTS") responsibility for the operation and maintenance of the Rail Project; and



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WHEREAS, the Council finds that:

1. The State and City Audits opine that the Rail Project has been significantly mismanaged and misrepresented by HART, which has resulted in the Rail Project being grossly over budget and years behind schedule;
2. HART has been less than forthcoming in providing information to the Council and the public, has failed to take steps to ensure ethical behavior, and lacks appropriate internal controls to safeguard taxpayer dollars;
3. The current structure of HART's appointed board has not provided the anticipated level of accountability for the Rail Project that the public and the Council expected when approving the creation of HART in 2010; and
4. There is a need to bring fiscal responsibility, management, and effectiveness to the Rail Project in order for the City to complete the Rail Project efficiently and in a cost-effective manner, and to restore public faith in the Rail Project and the City; and

WHEREAS, the Council also finds that dissolving HART, with its remaining powers, duties, and functions for public transit (those relating to planning, design, and construction) reverting to DTS and other appropriate City departments would save public money and, more importantly, enhance coordination and accountability for transit planning; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu:

1. That the following question be placed on the 2020 general election ballot:

"Shall the Revised City Charter be amended to dissolve the Honolulu Authority for Rapid Transportation; transfer its powers, duties, and functions to the Department of Transportation Services and other appropriate City departments; and make conforming amendments?"
2. That Article XVII of the Revised Charter of the City and County of Honolulu 1973 (2017 Edition) ("Public Transit Authority") be repealed.
3. That Section 16-129 of the Revised Charter of the City and County of Honolulu 1973 (2017 Edition) ("Transition Provisions Concerning the Establishment of the Honolulu Authority for Rapid Transportation") be repealed.



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4. That Section 6-1703 of the Revised Charter of the City and County of Honolulu 1973 (2017 Edition) be amended to read as follows:

"Section 6-1703. Powers, Duties, and Functions -

The director of transportation services shall:

- (a) Direct and perform program planning, operation, and maintenance of the city's multimodal transportation system in accordance with the general plan and development plans, and advise on the development thereof.
- (b) Direct and perform the planning, engineering, design, and construction for minor improvement projects for transportation systems, including bikeways ~~[but excluding the city's fixed guideway mass transit system]~~, as determined and identified by the director[-], and direct and perform all functions relating to the city's fixed guideway mass transit system, except those delegated to another department or agency under Section 4-202.
- (c) Locate, select, install, and maintain traffic control facilities and devices.
- (d) Provide educational programs to promote traffic safety.
- (e) Promulgate rules and regulations pursuant to standards established by law.
- (f) Manage and maintain all commercial parking facilities except facilities that are attached or adjacent to a building or project managed by another city agency, and direct and perform planning, engineering, design, construction, and minor improvement projects for said parking facilities as determined and identified by the director.
- (g) Prepare an energy conservation and emissions reduction plan for city transportation systems which shall include methods to meet state greenhouse gas reduction and clean energy goals. The plan shall be for a thirty-year period with review and revisions every five years. The energy conservation and emissions reduction plan shall be reviewed and approved for consistency with the general plan and sustainable community plans by the planning commission.
- (h) Enforce the collection of fares, fees, rates, tolls, and other charges for use of any and all modes of the multimodal municipal transportation system



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Project. Expenditures from the special fund shall be for the capital costs of the locally preferred alternative for the Honolulu High-Capacity Transit Corridor Project. Moneys in this fund shall be subject to appropriation by the council."

6. That Article XVI of the Revised Charter of the City and County of Honolulu 1973 (2017 Edition) be amended by adding a new section to be appropriately designated by the Revisor of the Charter and to read as follows:

"Section 16- . Transition Provisions Concerning Dissolution of Honolulu Authority for Rapid Transportation -

1. At the close of June 30, 2021, the Honolulu Authority for Rapid Transportation shall be dissolved and cease to exist. All of the authority's powers, duties, and functions relating to the city's fixed guideway mass transit system shall be transferred to, and assumed by, the department of transportation services on July 1, 2021.

2. As set forth in Section 4-202, the mayor may propose to the council that any powers, duties, and functions relating to the city's fixed guideway mass transit system be eliminated or transferred to, and assumed by, an appropriate department or agency of the executive branch other than the department of transportation services.

3. At the close of June 30, 2021, the term of each non-ex officio director of the Honolulu Authority for Rapid Transportation Board shall expire. At the same time, each ex officio director of the authority shall cease service in that capacity.

4. All proceedings pending before or involving the Honolulu Authority for Rapid Transportation on June 30, 2021, shall continue and remain in full force and effect. The proceedings shall be completed or assumed by the city.

5. All lawful obligations between the Honolulu Authority for Rapid Transportation and any other person or entity which exist on June 30, 2021 shall be transferred to and assumed by the city on July 1, 2021. The obligations shall continue in effect until discharged or lawfully terminated.

6. All contracts between the Honolulu Authority for Rapid Transportation and any other person or entity which are to remain effective after June 30, 2021, shall be transferred to and assumed by the city on July 1, 2021. The contracts shall continue in effect until fulfilled or lawfully terminated.



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Revised Charter of the City and County of Honolulu 1973, the Revisor of the Charter need not include the brackets, the material that has been bracketed and stricken, or the underscoring.

9. That if these Charter provisions are amended by any other Charter amendment approved by the electors in the 2020 general election, the Revisor of the Charter, in revising, compiling, or printing the Charter:

- a. May designate or redesignate articles, chapters, sections, or parts of sections, and rearrange references thereto; and
- b. Shall, except as otherwise expressly provided in this resolution or in the other resolution(s) amending these Charter provisions, give effect, to the extent possible, to all of the amendments approved.

The Revisor of the Charter may also change capitalization or the forms of numbers and monetary sums for the sake of uniformity.

10. That upon adoption of this resolution by the Council, the City Clerk be and is hereby directed:

- a. To prepare the necessary ballots with the question contained in this resolution and with spaces for "yes" and "no" votes on the question for presentation to the electors at the 2020 general election. The City Clerk may make technical and non-substantive changes to the form of the question presented in order to conform it to the form of other Charter amendment questions presented to the electors at the same election; and
- b. To publish the above-proposed Charter amendments at length in a daily newspaper of general circulation in the City and County of Honolulu at least 45 days prior to their submission to the electors at the 2020 general election.